



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 16, 2021

Gregory J. Rubens,
City Attorney
City of San Carlos
600 Elm Street
San Carlos, CA 94070

Re: Your Request for Advice
Our File No. A-20-111

Dear Mr. Rubens:

This letter responds to your request for advice on behalf of San Carlos Vice Mayor Laura Parmer-Lohan regarding conflict of interest provisions of the Political Reform Act (the "Act"), as well as Government Code Section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including the Public Contract Code.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the San Mateo County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTIONS

1. Under the Act, may San Carlos Vice Mayor Laura Parmer-Lohan consider a development agreement between the City and Alexandria Real Estate Equities regarding the development of a biotechnology corporate campus in the City given that the Vice Mayor works for another biotechnology company, which leases office space from

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Alexandria elsewhere in the United States, and the campus may be built for or used by a competing biotechnology company?

2. Under Section 1090 does Vice Mayor Parmer-Lohan have a conflict in regard to the development agreement, which would prohibit the City from entering the development agreement?

CONCLUSIONS

1. No. Vice Mayor Parmer-Lohan may not take part in consideration of the development agreement between the City and Alexandria Real Estate Equities, as the limited facts provided do not rule out the potential for the decision to have a reasonably foreseeable material financial effect on the Vice Mayor's financial interests.
2. No. While Vice Mayor Parmer-Lohan is disqualified from the decisions under the Act, she does not have a conflict under Section 1090. Accordingly, Section 1090 does not preclude the City from considering or entering the development agreement.

FACTS AS PRESENTED BY REQUESTER

You serve as the City Attorney for the City of San Carlos and seek advice on behalf of Vice Mayor Laura Parmer-Lohan.

Alexandria Real Estate Equities ("Alexandria"), a nationwide real estate developer has purchased two large parcels in the City of San Carlos. Its application for development and request for a development agreement will be reviewed in the next few months for a large biotechnology corporate campus in the City of San Carlos.

A nationally recognized publicly traded company ("Company") leases office space from Alexandria elsewhere in the United States. Company operates a large biotech campus and facilities, leased from another landlord, in the City of South San Francisco, approximately 20 miles from San Carlos.

Vice Mayor Parmer-Lohan works for Company as its Site Lead - Strategic Planning & Operations in South San Francisco. Vice Mayor Parmer-Lohan's responsibilities pertain to the South San Francisco location only, providing internal business operations support such as internal communications and external outreach, staff planning, tactical actions and execution concerning the South San Francisco site, and direct access and visibility to leadership to achieve the overall site mission and goals. She reports to a vice president responsible for the site in the organization. Vice Mayor Parmer-Lohan holds no hiring or firing authority at Company and her position does not include any decision-making authority related to real estate or leasing. The Vice Mayor advises that Company has just committed to a significant development in South San Francisco and has no plans or interest for leased space in San Carlos.

In further information provided via email, you stated that the City is unaware of any specific biotech companies which Alexandria may have approached to gauge interest in leasing of the

planned development. There is currently no indication that the project is being specifically marketed to a competitor of Company. However, you have stated that the campus may or may not ultimately be intended or used by a competing biotechnology company. At this time, information of this type has not been shared with the City by Alexandria and the City has not asked for or attempted to require the disclosure of this information.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).) The financial interests relevant to Vice Mayor Parmer-Lohan are:

- *Source of Income*: An interest in any source of income aggregating \$500 or more in the 12 months prior to the decision. (Section 87103(c).)
- *Business Entity*: An interest in any business in which the official has an investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).

A financial effect on a public official’s economic interest is reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. (Regulation 18701(a).) Where a public official’s economic interest is not explicitly involved in a decision, as here, a different standard for determining the reasonable foreseeability of a financial effect is applicable. Under Regulation 18701(b), “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.”

Further, the reasonably foreseeable financial effect on a source of income is material if the business entity is explicitly involved in the decision. (Regulations 18702.1(a), 18702.3(4).) However, where the business entity is not explicitly involved, as is the case here, whether or not the effect is material will depend upon the decision’s ability to impact gross revenues, assets or liabilities, and expenses of the entity as enumerated in Regulation 18702.1(a)(2) and (a)(3).

Here, it is reasonably foreseeable that the City’s consideration and adoption of the proposed development agreement with Alexandria could have a financial effect on the Vice Mayor’s financial interests. Based on the limited facts provided, the biotech corporate campus may be intended and ultimately built for a direct competitor of the official’s employer. If a direct competitor of Company leases the property, the decision has the potential to materially affect gross revenues, assets or liabilities, and expenses of Company. Unless and until the City is able to determine whether the

campus is being built and/or marketed to competitors of Company, we can only conservatively advise that it is foreseeable that the project will affect the official's financial interests based on these facts.

Section 1090

Section 1090 generally prohibits a public officer or employee from making or participating in the making of a contract in which he or she is financially interested. Section 1090 is concerned with financial interests, other than remote interests and noninterests, that prevent a public officer or employee from exercising absolute loyalty and undivided allegiance in furthering the best interests of his or her agency. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) A contract made in violation of Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.)

Under Section 1090, a member of a public agency's governing body is conclusively presumed to participate in the making of a contract under the governing body's authority, irrespective of whether he or she actually participates in the making of that contract. (*Thomson v. Call, supra*, at pp. 649-650.) Therefore, Section 1090 prohibits the entire body from entering into a contract in which a member of the body is financially interested, even if that member abstains from participating in the making of, or fully discloses his or her financial interest in, the contract. (*Ibid.*)

Here, the contract at issue is the development agreement between the City and Alexandria. Company is not a party to the development agreement, and there are no other facts to suggest that the Vice Mayor has a financial interest in the contract. Accordingly, she does not have a conflict under Section 1090. Thus, while the Vice Mayor may not participate in the discussion and potential adoption of the development agreement due to her conflict under the Act, the rest of the City Council is not precluded from considering or entering the development agreement.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd", is positioned above the typed name of the signatory.

By: Erika M. Boyd
Senior Counsel, Legal Division

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